

DECISION – WALPOLE ZONING BOARD OF APPEALS CASE NO. 26-17

APPLICANT:
The Union Street CME, LLC

LOCATION OF PROPERTY INVOLVED:

255 Union Street, Walpole and shown on the Assessors Map as Lot No. 21-15, General Residence Zone.

APPLICATION FOR:

A **Special Permit** under Section 5-B, Table 5-B.1.3.d of the Zoning By-Laws to allow a four-unit multi-family dwelling in the existing “house” structure at 255 Union Street.

A **Special Permit** under Section 5-B, Table 5-B.1.3.c of the Zoning By-Laws to allow a three-family dwelling in the existing barn structure at 255 Union Street.

After proper notification as required by statute, a Public Hearing was opened on January 17, 2018 in the Main Meeting Room of Town Hall for the purpose of receiving information, testimony and voting on the above **Special Permit** petitions submitted by the Union Street CME, LLC. The hearing was continued to February 21, 2018, at which time the Board closed the public hearing, deliberated and rendered this decision.

The following members were present and voting:

Matthew Zuker, Chairman
Craig W. Hiltz, Vice Chairman
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member

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MATERIALS SUBMITTED:

- Site Operations and Maintenance Plan, dated 12/11/2017, revision date: 2/9/2018
- New Design 255 Union Street, Walpole, MA, dated 12/21/2017
- 255 Union Street Cover Sheet Plan of Land In Walpole, MA, dated 12/20/2018, revision date: 2/9/2018

A motion was made by Craig W. Hiltz, seconded by Mary Jane Coffey on behalf of the applicant to amend the application by adding a special permit request pursuant to Section 9.3.A of the Zoning By-Laws to alter and expand the pre-existing non-conforming use of the site. It was agreed the addition was allowable as it was within the parameters of the original petition and the notification.

The vote was **5-0-0 in favor**; therefore the application is amended to add a request for a **Special Permit** under Section 9.3.A: (Zuker, Hiltz, Fitzgerald, Coffey and Murphy)

* * * * *

A motion was made by Craig Hiltz, seconded by Susanne Murphy on behalf of the applicant to grant a **Special Permit** under Section 9.3.A of the Zoning By-Laws to allow the alteration, of the pre-existing nonconforming use of multiple principal residential buildings on a single lot by extending this use into the existing third “barn” structure already existing on the property.

The vote was **5-0-0 in favor**; therefore the application for a **Special Permits** hereby **granted**, **subject to the conditions enumerated below**: (Zuker, Hiltz, Fitzgerald, Coffey and Murphy)

* * * * *

A motion was made by Craig Hiltz, seconded by Robert Fitzgerald on behalf of the applicant to grant a **Special Permit** under Section 5-B, Table 5-B.1.3.d of the Zoning By-Laws to allow a four-unit multi-family dwelling in the existing “house” structure at 255 Union Street.

The vote was **5-0-0 in favor**; therefore the application for a **Special Permits** hereby **granted**, **subject to the conditions enumerated below**: (Zuker, Hiltz, Fitzgerald, Coffey, Murphy)

* * * * *

A motion was made by Craig Hiltz, seconded by Mary Jane Coffey on behalf of the applicant to grant a **Special Permit** under Section 5-B, Table 5-B.1.3.c of the Zoning By-Laws to allow a three-unit multi-family dwelling in the existing “barn” structure at 255 Union Street.

The vote was **5-0-0 in favor**; therefore the application for a **Special Permits** hereby **granted**, **subject to the following conditions**: (Zuker, Hiltz, Fitzgerald, Coffey and Murphy)

CONDITIONS:

1. Site improvements shall be made as depicted on the plan entitled “255 Union Street Site Plan of Land in Walpole, MA” prepared by Merrikin Engineering, LLP and with a latest revision date of February 9, 2018. Utility as-built plans shall be submitted to the Engineering Department, including swing ties to pertinent features.
2. The barn structure shall be separately connected to the municipal sewer system in accordance with the requirements of the Sewer & Water Department.
3. Walkways shall not be asphalt pavement. Other types of surfaces, which provide for adequate and safe pedestrian access may be installed such as gravel, pavers, concrete, etc., which will allow the property to remain consistent with its historic character
4. The applicant shall satisfy the requirements of E911 relative to site address designations.
5. The applicant shall submit a revised site plan with the no-alter zone markers labeled on the plan.

6. The applicant shall comply with an Order of Conditions (SE_315-1144) issued by the Walpole Conservation Commission.

REASONS FOR DECISION:

The property contains three (3) existing structures. The “house” is an existing two-story residential structure that has been historically used for three to four (3-4) dwelling units. The Zoning Enforcement Officer (ZEO) views this structure to be a pre-existing nonconforming four-family unit currently and the applicant seeks the special permit to make it a legal four-unit dwelling (instead of non-conforming). The applicant proposes to renovate the structure on the interior and exterior but not to expand the footprint.

The existing “cottage” has historically been used as a single dwelling unit and is viewed by the Building Department as a pre-existing non-conforming single-family dwelling unit. The applicant intends to continue to use that structure for a single-family dwelling unit with a small proposed addition on an existing concrete patio area to the rear of the building. The Building Department’s opinion is that no special permit is necessary for the use of this detached structure as a single-family dwelling unit since single-family dwellings are allowed by right in the GR district.

The existing “barn” structure has historically been used as a barn and was an antiques consignment shop at one time. The applicant provided sufficient evidence that the barn was occupied as a residence at some point in the past. The applicant proposes to renovate the interior of the structure, to add a deck and to enclose an existing carport. This renovation would convert the structure to a three-family dwelling, which requires a special permit.

In addition to the proposed renovations to the existing structures, the applicant proposes several site improvements as shown on the approved site plan (Planning Board Case No. 17-5), including, but not limited to a new 16-space parking lot, new walkways, new dumpsters and other site amenities.

The Board finds that the applicant was able to meet the requirements of Section 9.3.A of the Zoning By-law for the granting of a special permit to alter, expand or extend the pre-existing nonconforming use of multiple principal residential structures in that:

- *A nonconforming use may be ... altered, expanded or extended ... in accordance with the provisions of section 2.2;*
 - Refer to the findings below for section 2.2 of the Zoning Bylaw.
- *Provided further that the Board finds that such alteration, expansion or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use.*

The proposed expansion of the nonconforming use is to extend/expand the permissible use of a three-family residential dwelling into an existing barn on the property, thereby making the existing barn the third principal structure on the property. The “house”

building and “cottage” building have historically been used as principal residential dwelling structures and are therefore legally nonconforming in that regard. The applicant proposes to substantially maintain the appearance of the barn (windows and doors will be added but the overall appearance will generally remain the same) and will occupy the existing structure with only small exterior additions (a proposed deck and an enclosed existing carport). The applicant further proposes to improve on-site traffic circulation by adding a parking lot adequate for the proposed additional and existing residential units. For these and the other reasons discussed herein, the Board finds that the proposed expansion of permissible residential uses into the “barn” building is not substantially more detrimental to the neighborhood than the existing nonconforming use.

The Board finds that the applicant was able to meet the requirements of Section 5-B.1.3.d of the Zoning By-law for the granting of a multi-family dwelling special permit in that:

- i. Such dwelling is connected or is to be connected with the public sewer system at the time of construction.*

The applicant provided documentation that the existing “house” structure, which is the subject of the four-unit multi-family dwelling special permit, is currently connected to the sewer. By this decision, the Board is requiring that all other dwelling units have separate connections to the municipal sewage system.

- ii. Such dwelling is located on a lot having an area of at least thirty thousand (30,000) square feet with an additional ten thousand (10,000) square feet for each dwelling unit in excess of three (3) to be accommodated;*

The applicant provided documentation that the existing lot has 392,257 s.f. of area, which far exceeds the required lot area.

- iii. A fifty (50) foot buffer zone shall be required where the adjacent lot has a single-family dwelling or is vacant.*

The direct abutter to the south is a vacant lot and the abutters to the west are single-family homes. The applicant has depicted the required 50 foot buffer along these lot lines in the site plan. The buffer area is naturally wooded and will remain untouched. In addition, the applicant has agreed to install new evergreen trees along the westerly side of the new parking area to provide additional screening to the westerly abutters.

The Board finds that the applicant was able to fulfill the requirements of Section 5-B.1.3.c of the Zoning By-law for the granting of a three-family dwelling special permit in that:

- *If located on a lot having an area of at least thirty thousand (30,000) square feet; and*

- The applicant provided documentation that the existing lot has 392,257 s.f. of area, which far exceeds the required lot area.

- *if connected to or to be connected at the time of construction with the public sewer system.*

The applicant provided documentation that the existing “barn” structure, which is the subject of the three-family dwelling special permit, will be connected to the sewer at the time of construction.

FURTHER FINDINGS

It is the finding of the Board that the applicant was able to meet the requirements of Section 2.2.B of the Zoning Bylaws, which requires that:

- (1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:***

- (a) Does and shall comply with such criteria or standards as shall be set forth in in the section of this Bylaw which refers to the granting of the requested special permit;***

As discussed and detailed above, the proposed work complies with the special permit provisions of Section 5-B.1.3.d , 5-B.1.3.c and Section 9.3.A of the Zoning By-law.

- (b) Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;***

The Board finds that the site has historically been used for three to five (3-5) dwelling units and that increasing this number to eight (8) dwelling units will increase vehicular and pedestrian traffic. Given the size of the lot, the location of the site, and the newly proposed driveway and parking area, the Board finds that these nominal increases will not significantly affect traffic and pedestrian patterns in the immediate neighborhood. The Board therefore finds that this requirement is met.

- (c) Shall not have a number of residents, employees, customers, or visitors so as to adversely affect the immediate neighborhood;***

The Board finds that the site has historically been used for three to five (3-5) dwelling units and that increasing this number to eight (8) will not generate an unreasonable number of residents or visitors so as to adversely affect the immediate neighborhood. The proposed dwelling units are a mixture of one and two-bedroom units on a lot that far exceeds the required lot area. The Board therefore finds that this requirement is met.

- (d) Shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;***

The Board finds that except for the existing “house” structure, which is pre-existing non-conforming due to front yard setback, the existing structures meet

the required dimensional requirements of the Zoning By-law including lot coverage. The existing “house” structure is not being enlarged so there is no increase in the front yard setback non-conformity. There are no Section 5-G buffer zone requirements associated with this use.

(e) Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The Board finds that residential uses are not known to be dangerous due to fire, explosion, emission of wastes, or other causes. The applicant is proposing a modest increase in the number of dwelling units on the property. In addition, the proposed renovation and upgrading to current standards of the existing older structures will reduce the risk of fire and will make the site safer. As such, the Board finds that this criterion is met.

(f) Shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that residential uses are not known to be typically associated with noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard which would adversely affect the immediate neighborhood. The applicant is proposing a modest increase in the number of dwelling units on the property. As such, the Board finds that this criterion is met.

(g) Shall not adversely effect the character of the immediate neighborhood; and

The Board finds that the property in question lies within an existing residential neighborhood, that the proposed use is a permissible residential use, and that the applicant proposes to renovate the three (3) existing structures, thereby preserving the historic character of the existing property. The applicant proposes to generally maintain the architecture of the existing buildings. No new structures are proposed on the site. The proposal therefore maintains the overall density of structures on the site and therefore does not adversely affect the character of the neighborhood. The Board therefore finds that this criterion is met.

(h) Shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the proposed reuse of existing residential structures for multi-family and three-family residential structures is consistent with the historical use of the site and is appropriate for the immediate location and neighborhood within the General Residence zone, which is a residential zoning district. As such, the Board finds that this criterion is met.

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Consistency: This decision is consistent with purpose and intent of the Zoning By-laws.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

* * * * *

Said Special Permits(s) is(are) granted pursuant to Massachusetts General Laws c. 40A, s.9 which provides in pertinent part as follows:

"...special permits granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, s. 11. provides in pertinent part as follows:

"A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."

MASSACHUSETTS GENERAL LAWS c. 40A, s. 15 PROVIDES THAT APPEALS FROM A DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO SECTION 17 OF c 40A AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Robert Fitzgerald, Clerk

cc: Town Clerk
Board of Selectmen

Engineering
Building Inspector

Planning Board
Conservation Commission

This decision was made on February 21, 2018 and filed with the Town Clerk on March 5, 2018.